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July 14, 1993

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BY HAND

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

MM-93-25

Re: Reply Comments of DirecTv, Inc.; ~~GC~~ Docket No. ~~93-23, RM-7931~~

Dear Ms. Searcy:

Enclosed on behalf of DirecTv, Inc. are an original and four copies of DirecTv's Reply Comments in the above-referenced proceeding.

Please call me if you have any questions concerning these comments.

Very truly yours,

Gary M. Epstein
James H. Barker
of LATHAM & WATKINS

Enclosures

cc: Chairman James H. Quello
Commissioner Andrew C. Barrett
Commissioner Ervin S. Duggan

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List A B C D E

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Implementation of Section 25 of the Cable Television Consumer Protection and Competition Act of 1992	)	MM Docket No. 93-25
Direct Broadcast Satellite Public Service Obligations	)	

REPLY COMMENTS OF DIRECTV, INC.

Gary M. Epstein
James H. Barker
LATHAM & WATKINS
Suite 1300
1001 Pennsylvania Ave., N.W.
Washington, D.C. 20004
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July 14, 1993

EXECUTIVE SUMMARY

As DirecTv noted in its initial Comments, it will launch, in December of this year, the first high-powered U.S. DBS satellite, and shortly thereafter will introduce to American consumers the first truly competitive service to cable television.

In its initial Comments in this proceeding, DirecTv sought to highlight for the Commission the importance to the fledgling DBS industry, and ultimately to the public, of adopting a flexible regulatory approach with respect to the imposition of public service obligations on DBS providers. DirecTv has advocated -- and here reiterates -- the benefits of such a flexible regulatory approach, which, in addition to being consistent with the plain language of the Act, will provide enormous benefits to consumers.

The Commission has received a wide range of comments in this proceeding thus far, many of which are in accord with DirecTv's proposed flexible approach. The Commission has also received, however, a number of misguided suggestions that would, if accepted, go far towards stunting the growth and development of the most competitive and viable service alternative to cable television. The Commission must not allow this to happen. As DBS providers continue their struggle to compete with the entrenched cable industry, the Commission should be extremely wary of imposing excessive and unrealistic obligations, such as requirements of "localism," on DBS providers, or of constraining unduly the types of programming that DBS licensees can obtain to satisfy their statutory obligations.

Similarly, in structuring the public service obligations of DBS providers, the Commission should resist attempts by some parties to impose a "PEG-access"-like regime upon DBS. At all costs, the Commission must ensure that DBS providers are left with the discretion and flexibility to select the specific noncommercial offerings that will be carried on their systems to meet their program carriage obligations.

The Commission should promote opportunities and incentives for DBS providers to embrace Section 25's public service requirements, and encourage them to acquire and market the required programming in a manner that maximizes program quality, program diversity and customer interest. This approach will ensure that DBS develops as Congress and the Commission intended, bringing additional diversity and competition to the video marketplace.

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Direct Broadcast Satellite Public Service Obligations	)	

REPLY COMMENTS OF DIRECTV, INC.

DirecTv, Inc. ("DirecTv") hereby submits its Reply Comments in connection with the Federal Communications Commission's Notice of Proposed Rule Making in the above-captioned proceeding, FCC 93-25, released March 2, 1993 (the "Notice"). DirecTv's Reply Comments address selected aspects of the implementation of the provisions of the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992) (the "1992 Cable Act") regarding public service obligations of Direct Broadcast Satellite ("DBS") service providers (Section 25).

I. INTRODUCTION

As DirecTv noted in its initial Comments, it will launch, in December of this year, the first high-powered U.S. DBS satellite, and shortly thereafter will introduce to American consumers the first truly competitive service to cable television. DirecTv will offer -- via satellites operating in the DBS band at 12/17 GHz -- a multichannel video programming service to households across the nation equipped with low-cost home dishes approximately eighteen inches in diameter. DirecTv eventually will provide approximately one hundred and fifty channels of quality subscription

and pay-per-view video programming to the public, including quality entertainment, educational and informational programming.[1/]

In its initial Comments to the Notice, DirecTv sought to highlight for the Commission the importance to the fledgling DBS industry, and ultimately to the public, of adopting a flexible regulatory approach with respect to the imposition of public service obligations on DBS providers. DirecTv has advocated -- and here reiterates -- the benefits of such a flexible regulatory approach, which, in addition to being consistent with the plain language of the Act, will provide enormous benefits to consumers.

The Commission has received a wide range of comments in this proceeding thus far, many of which are in accord with DirecTv's proposed flexible approach. The Commission has also received, however, a number of misguided suggestions that would, if accepted, go far towards stunting the growth and development of the most competitive and viable service alternative to cable television. The Commission must not allow this to happen. As DBS providers continue their struggle to compete with the entrenched cable industry, the Commission should be extremely wary of imposing excessive and unrealistic obligations, such as requirements of "localism," on DBS providers, or of constraining unduly the types of programming that DBS licensees can obtain to satisfy their statutory obligations.

[1/] To date, DirecTv's programming includes: The Disney Channel, CNN, Headline News, TNT, TBS Superstation, The Cartoon Network, USA Network, The Sci-Fi Channel, TNN: The Nashville Network, CMT: Country Music Television, The Family Channel, Discovery, The Learning Channel, E! Entertainment Television, and two Canadian services -- Newsworld International and Northstar. DirecTv also has pay-per-view agreements with Paramount Pictures, Sony Pictures Entertainment, which includes Columbia/TriStar releases, Turner Broadcasting, for titles from the Turner/MGM library, and Universal Pay Television, Inc. Of particular relevance to this proceeding is DirecTv's recently announced addition of C-SPAN and C-SPAN 2 to its programming lineup in an effort to bring quality noncommercial informational public affairs programming to its subscribers.

Similarly, in structuring the public service obligations of DBS providers, the Commission should resist attempts by some parties to impose a "PEG-access"-like cable regime upon DBS. Instead, the Commission should promote opportunities and incentives for DBS providers to embrace Section 25's public service requirements, and encourage them to acquire and market the required programming in a manner that maximizes program quality, program diversity and customer interest. This approach will ensure that DBS develops as Congress and the Commission intended, bringing additional diversity and competition to the video marketplace.

II. DEFINITION OF PROVIDER OF DBS SERVICE

Like DirecTv, all parties that addressed the issue appear to agree that Part 100 DBS licensees should be held ultimately responsible for ensuring that public interest obligations imposed pursuant to Section 25 are met. This interpretation accords with the plain language of Section 25(b)(5)(A), which applies expressly in unlimited terms to Part 100 "licensees" in the Ku band. DirecTv would reiterate its request, however, that the Commission preserve in its new rules the freedom of DBS providers to shift contractually some or all of the day-to-day responsibility for meeting Section 25's requirements. Part 100 DBS licensees should retain the discretion to decide how they can best incorporate Section 25's public interest requirements into their businesses.

With respect to Part 25 DBS providers, the Commission should affirm what it has acknowledged is "[t]he most natural reading of the statute," namely, that the requirement for fulfilling Section 25 obligations should rest with Part 25 distributors of DBS programming, and not with the Part 25 satellite licensee.[2/] In drafting Section 25(b)(5)(A)(ii), Congress obviously could have

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[2/] In addition to being the plainest and most logical reading of the statute, DirecTv agrees with GTE Spacenet that, as a practical matter, the general manner in which Part 25 fixed-satellite service ("FSS") licensees provide service does not lend itself to the public service scheme imposed by Section 25. See Comments of GTE Spacenet at 6-10. This presumably was the precise reason why the definition looks to Part 25 distributors controlling a certain number of channels to trigger the public interest obligation.

chosen to -- but did not -- define "provider of direct broadcast satellite service" in terms of Part 25 "licensees," in a manner similar to the language it used for Part 100 "licensees" in the preceding Section 25(b)(5)(A)(i). Instead, Congress targeted its alternative definition of DBS provider at "distributors" who control a threshold number of Ku band channels for the "provision of video programming directly to the home." Section 25(b)(5)(A)(ii).[3/] The alternative language is a clear recognition by Congress that a much different regulatory scheme exists with respect to Part 25 fixed-satellite service ("FSS") licensees, i.e., much of the capacity on Part 25 FSS satellites is sold on a "transponder sales" basis, and the FSS licensee normally has little control over the uses to which the capacity will be put. The Commission's alternative definition of DBS provider is, in other words, plainly intended to encompass entities like Primestar (which offers DBS services by operating as a distributor leasing capacity from a Part 25 FSS satellite) without disrupting other aspects of the Commission's Part 25 regulatory regime.

Thus, the Commission should reject Primestar's strained, and incorrect, reading of the statute which suggests that (1) Congress somehow intended a different definition of DBS provider to apply for purposes of Section 25(a) than for Section 25(b) (which, not surprisingly, would exclude Primestar from compliance with Section 25(b)'s program carriage obligation); and (2) Section 25(b)'s

imposition of public service obligations on Part 25 licensees, as opposed to the "distributors" referenced in the plain language of Section 25(b)(5)(A)(ii)'s alternative definition.[4/]

Both of Primestar's positions are without merit. First, Congress expressly defined "provider of direct broadcast satellite service" in Section 25(b), and used the exact same language for the term in Section 25(a). There is absolutely no indication either in the statute or legislative history that such identical language was intended to have different meanings within the same Section of the Act. Moreover, Primestar's argument focusing only on "authorization" and "renewal" in the sentence that it quotes from Section 25(b)(1), conveniently reads the first term, "provision," out of the statute. While "authorization" and "renewal" do suggest an enforcement mechanism applicable to Part 100 "licensees," the term "provision" (also used in Section 25(b)(5)(A)(ii)) operates to impose the public service carriage obligations on the "distributors" in the alternative definition, without regard to whether they also happen to be Part 25 "licensees."

Once it is determined that program distributors "control" a certain minimum number of channels on any satellite, Section 25 confers explicitly upon the Commission jurisdiction over such distributors for the limited purpose of enforcing compliance with Section 25's public interest and program carriage requirements. Primestar's effort to escape its clear obligations under Section 25(b) of the statute must be rejected by the Commission.

[4/] Specifically, PRIMESTAR argues that "[it] is the satellite-owner licensee, not the lessee programmer, that receives initial and renewal authorizations which the Commission may so condition." Comments of PRIMESTAR Partners L.P., at 9. Although stating that "the Act is not the paragon of clarity" on this point, the Association of America's Public Television Stations and Corporation for Public Broadcasting ("AAPTS") makes a similar argument. see Comments of AAPTS at 7.

III. PUBLIC INTEREST REQUIREMENTS UNDER SECTION 25(a)

Section 25(a) requires the Commission, at a minimum, to apply the reasonable access provisions of Section 312(a)(7) of the Communications Act, and the equal time requirements of Section 315 of the Communications Act, to DBS providers. In addressing the Commission's proposal to modify the political broadcasting rules as appropriate to "account for differences between multichannel DBS systems and traditional broadcast stations,"[5/] most commenters were in accord with DirecTv's position that DBS providers should be granted discretion and flexibility at least on par with broadcasters in satisfying these requirements.[6/]

Many parties also agreed that the Commission should tailor its "reasonable access" requirement in the DBS context to account for the inherently national scope and non-local nature of DBS technology. The Commission has rightly recognized that the feasibility of offering "reasonable access" to all federal candidates depends in large part upon the extent to which DBS is suited to localized or regionalized programming, which, at this phase of DBS development, it simply is not.[7/] DBS continues to be a national service, serving the entire continental United States.[8/] For this

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5/ Notice at ¶ 21.

6/ See Comments of DirecTv, at 12-16; see, e.g., Comments of Discovery Communications, Inc., at 3-5; Comments of PRIMESTAR at 10-13; Comments of the Satellite Broadcasting and Communications Association of America ("SBCA"), at 12-17; Comments of Time Warner Entertainment L.P., at 3-4; Comments of United States Satellite Broadcasting, Inc. ("USSB"), at 5-7.

7/ See Notice at ¶ 24.

8/ CFA is simply wrong to suggest that it is "appropriate to extend the reasonable access and equal time provisions to all candidates, whether they are running for federal, state or local

reason, DirecTv and others have supported the Commission's suggestion in the Notice that DBS providers be granted the discretion to limit the applicability of the "reasonable access" federal elections of national importance.[9/]

DBS providers should also be allowed reasonable discretion to control placement of political advertisements in their programming. In the broadcast context, the Commission has reaffirmed its policy of trusting the "good faith judgments of licensees to provide reasonable access to federal candidates," including the discretion to "take into consideration their broader programming and business commitments."[10/] Such a policy makes eminent sense when applied to DBS as well, particularly in light of the independent editorial role that many programmers play in relation to DBS providers. Although DBS providers certainly will attempt to meet reasonable access and equal opportunity requirements in situations where they exercise editorial control over programming, many DBS channels will offer "advertisement free" subscription or premium services where DBS providers do not exercise control over the programming day.[11/]

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and the imposition of such rules could significantly affect the viability of the DBS business.

9/ Indeed, some parties took a slightly more extreme view than DirecTv in suggesting that "reasonable access" be limited to Presidential and Vice Presidential elections only. See, e.g., Comments of PRIMESTAR at 12; Comments of the SBCA, at 12-14-16; Comments of Comments of USSB at 6. While DirecTv has not proposed at this time limiting races of "national importance" only to President and Vice Presidential contests (since some Senate and House races, for example, may also qualify as such), this does not obscure the central point that DBS access requirements must be tailored to coincide with the "national" footprint of DBS service. See NAB v. FCC, 740 F.2d 1190, 1197 (D.C. Cir. 1984) (finding that "DBS technology is inherently unsuitable for the provision of traditional broadcast service").

10/ Codification of the Commission's Political Programming Policies, 7 FCC Rcd 678, 681 (1991).

11/ In certain circumstances, advertising may be permitted but be subject to significant contractual restraints.

Given this aspect of the DBS industry, where providers will have little ability, if any, to alter daily programming schedules to make accommodations within dayparts for political broadcast time, a DBS provider's discretion should expressly include the option of placing all political advertisements on one channel or a limited number of specific channels if the provider concludes that this is the optimal means of method of meeting its public service obligations. The dedicated channel option is amply supported by the current record,[12/] and makes good policy sense in accommodating the interests of politicians in accessing DBS subscribers; of subscription programmers in retaining their editorial discretion; of DBS providers, in both supplying consumers with diverse programming and in preserving their ability to integrate satisfaction of public interest requirements with other offerings; and of the public in being exposed to a wide-range of political views.[13/]

IV. LOCALISM ON DBS SYSTEMS

The Comments thus far are virtually uniform in agreeing that implementation of Commission-imposed obligations based on the principle of localism does not make sense, and that

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12/ Notice at ¶ 23; see Comments of DirecTv at 13-15; Comments of Discovery at 5-6; Comments of Primestar at 12; Comments of SBCA at 14; Comments of Time Warner at 3-4; Comments of USSB at 6-7.

13/ The position of CFA on this issue is difficult to understand. On the one hand, CFA agrees that the Commission should apply Sections 312(a)(7) and Section 315 of the Communications Act to DBS providers. In applying these rules, the Commission traditionally has resisted any rigid restraints on broadcaster discretion in meeting the requirements, and instead has chosen to measure compliance flexibly on a case-by-case basis, considering "the circumstances surrounding a candidate's request for time and the station's response to that request." Codification of the Commission's Political Programming Policies, 7 FCC Rcd at 681. CFA, however, would have the Commission depart from its flexible case-by-case approach in the DBS context and institute a per se ban on dedicated channel use based on an entirely speculative fear that DBS providers might "relegate all political advertisements to unpopular times and channels to discourage use by candidates." Comments of CFA at 25-26. Not only is there no basis for this fear, but the Commission would have the means to address such occurrences on a case-by-case basis if particular DBS providers were deemed to be utilizing the dedicated channel mechanism unreasonably. The Commission should refrain from restricting DBS providers' discretion in the manner CFA suggests.

such obligations are inconsistent with the design, configuration and nature of DBS service.[14/] As DirecTv pointed out in its initial Comments, although DBS will surely provide service to all communities, the satellite technology to be deployed is non-local in nature, designed for the provision of video programming on a national basis.[15/] The technology is neither meant nor suited for the provision of traditional local broadcast service.[16/]

The only parties to contend seriously that DBS providers should be subject to obligations of localism are the National Association of Telecommunications Officers and Advisors, National League of Cities, United Nations Conference of Mayors, and the National Association of Counties (collectively, "NATOA"), who submitted their Comments in a joint filing. NATOA insists that the Commission is required to adopt local programming and other requirements for DBS, and that the burden should be on DBS providers to demonstrate the technical limits of their ability to meet such requirements.[17/] Specifically, NATOA would have the Commission impose the following additional "localism" requirements upon DBS providers:

- The Commission should clarify that local educational or informational programmers should have access for free or at reduced rates to channel capacity, and DBS providers should be required to designate particular channel capacity set aside for educational or governmental purposes as local

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14/ See, e.g., Comments of AAPTS at 35-36; Comments of DirecTv at 17; Comments of NAB at 2-5; Comments of Primestar at 13; Comments of SBCA at 13-14; Comments of Shamrock Broadcasting et al., at 2-3; Comments of USSB at 7-8.

15/ See Notice at ¶ 33.

16/ See NAB v. FCC, 740 F.2d 1190, 1197 (D.C. Cir. 1984). DirecTv will in fact be marketing its service in many cases as a nationwide complement to local broadcast and cable services. To facilitate this objective, the receiving equipment utilized by DirecTv subscribers will have a user-friendly "A/B" switch so that customers may switch from DBS satellite reception to local broadcast or cable programming.

17/ Comments of NATOA at 7.

channel capacity, which would be divided among localities that a DBS service is intended to serve.[18/]

- The Commission should require DBS providers to contribute 5% of their gross revenues to fund local programming that would be distributed over a DBS provider's local channel capacity. According to NATOA, this requirement is necessary "to ensure that DBS services compete on a level playing field with cable operators." Local organizations similar to PEG-access type corporations would be set up to determine how to allocate airtime on local channel capacity and to distribute grants to programmers in areas served by a local channel.[19/]

- The Commission should impose additional non-video local requirements for DBS, such as local teletext services.[20/]

At best, NATOA's position in this proceeding is ill-conceived and misguided. At worst, if implemented, NATOA's proposals would eviscerate the DBS industry before the service ever had a chance to develop or compete with cable television. NATOA's Comments evidence a gross misunderstanding of the purposes of the 1992 Cable Act and of the nature of DBS service.

First, NATOA frames its Comments by arguing that "it is essential" for the Commission to impose broad PEG-access-like obligations upon DBS providers to ensure that "DBS services do not obtain an unfair competitive advantage over cable operators which are subject to public interest requirements -- thus upsetting the competitive balance Congress struck in enacting the 1992 Cable Act."[21/] Thus, NATOA demands that DBS providers set aside a percentage of their gross revenues to fund local programming in order "to ensure that DBS services compete on a level playing field with cable operators."[22/] Such statements evidence a fundamental misperception of the

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[18/] Id. at 9.

[19/] Id. at 9-10 & n.6.

[20/] Id. at 11.

[21/] Id. at 4.

[22/] Id. at 10 n.6.

goals of the 1992 Act. Specifically, a core goal of the Act is to remedy existing competitive disadvantages that MVPDs like DirecTv already face relative to cable operators. As the Commission recently observed:

> The 1992 Cable Act and its legislative history, reflect congressional findings that horizontal concentration in the cable television industry, combined with extensive vertical integration (i.e., combined ownership of cable systems and suppliers of cable programming), has created an imbalance of power . . . between incumbent cable operators and their multichannel competitors (i.e., . . . direct broadcast satellite (DBS) providers, . . .) This imbalance has limited the development of competition and restricted consumer choice.[23/]

Thus, the statute is a response to an already malfunctioning competitive marketplace. There is no "playing field" to level.

More fundamentally, NATOA's eagerness to extract franchising fees and municipal revenues from a promising emerging technology has blinded it to the essential nature of DBS, which has long been recognized as an inherently national service that is severely limited in its ability to serve local interests.[24/] DBS is a "different animal" from cable television, and indeed, NATOA has advocated adoption of a regulatory model that would have disastrous consequences for DBS as a

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23/ Development of Competition and Diversity in Video Programming Distribution and

fledgling industry. First, NATOA's barrage of "localism" obligations that attend its construct would pose a severe economic threat to the viability of DBS startup businesses. Second, as DirecTv has repeatedly emphasized, trapping DBS providers within a PEG-access model could constitute a senseless waste of channel capacity if providers instead are able to integrate and package noncommercial educational or informational programming attractively into appropriate dayparts that match the optimal viewing times and desires of the American public. Third, there is utterly no statutory authority or public policy rationale for DBS providers to "contribute" 5% of their gross revenues to any kind of local programming fund. Section 25 of the Cable Act already represents a significant compromise between DBS operators' rights and public service obligations. Adding a 5% gross revenue "tax" to the equation would severely disrupt that balance and would be blatantly unlawful.

Finally, NATOA is flatly incorrect that Section 25 "requires" the Commission to adopt local programming requirements. Section 25(a) only requires the FCC to "examine the opportunities" that the establishment of DBS provides for the principle of localism under the Act. The statute otherwise firmly commits the imposition of any localism requirements to the Commission's discretion. The Commission has clearly discharged its responsibility to consider the issue; it should affirm its tentative conclusion that localism obligations "should not be considered in this area given that DBS is a fledgling industry and that there is an abundance of local broadcast stations and cable television systems that are already serving local needs."[25/]

V. CARRIAGE OBLIGATIONS FOR NONCOMMERCIAL EDUCATIONAL OR INFORMATIONAL PROGRAMMING

Section 25(b)(1) of the Cable Act requires DBS providers to reserve 4-7% of their total channel capacity exclusively for noncommercial programming of an educational or informational

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25/ Notice at ¶ 36.

nature.[26] As a particular subset of Section 25(b)(1), Section 25(b)(3) of the Act states that DBS providers "shall meet the requirements of this subsection by making channel capacity available to national educational programming suppliers," upon reasonable prices, terms, and conditions.

A. Definition of "National Educational Programming Supplier"

Section 25(b)(3) requires that a DBS provider shall meet the requirements of the statute by making its channel capacity available to "national education programming suppliers." Section 25(b)(3) is a subset of Section 25(b)(1)'s obligation for DBS providers to carry certain kinds of noncommercial programming, which mandates that DBS providers reserve channel capacity for noncommercial programming of an educational **or** informational nature. On its face, Section 25(b)(1) plainly contemplates that DBS providers should be permitted to choose from a wide array of qualified programming, that is, noncommercial programming that may be either educational or informational in nature.

A vast majority of commenters has urged the Commission to interpret Section 25 expansively in determining the programming that will qualify to meet a DBS provider's carriage obligations. Parties have urged the Commission to encourage the development of a wide variety of quality public service programming (1) by recognizing, like DirecTv, that "national educational programming suppliers" is merely a subset of a larger pool of qualified noncommercial educational or informational programming;[27] and/or (2) by simply reading the definition of "national educational

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[26] DirecTv has urged the Commission to adopt 4% as the maximum amount of capacity that DBS providers should be required to reserve for noncommercial programming, at least initially. See Comments of DirecTv at 18, 21. DirecTv's proposed method of measuring this 4% of total channel capacity would utilize a cumulative hour approach, based upon the calculation of a compressed channel "base" for a given system. See id. at 9-11, 19-21.

[27] See Comments of DirecTv at 21-24; see also Comments of NATOA at 13-15 (arguing that "Congress did not intend that 'national educational programming suppliers' would be the only example of 'noncommercial programming of an educational or informational

programming supplier" -- which is drafted in non-exclusive terms -- in an extremely broad fashion to include many different types of noncommercial public service programming.[28/] Both of these approaches yield the result that is plainly intended by Congress, i.e., that the Commission should include within the scope of qualified programming a broad range of educational or informational offerings.[29/]

Predictably, AAPTS has urged a much narrower interpretation of the statute in order to ensure that "national educational programming suppliers," primarily public television stations, are the exclusive class of programming suppliers for purposes of meeting Section 25(b)'s carriage

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nature'").

28/ See, e.g., Comments of CFA at 15-17; Comments of Discovery at 7-8; Comments of Mind Extension University, Inc. at 5-7; Comments of Primestar at 20; Comments of SBCA at 20-22; Comments of USSB at 10-11. The Commission has adopted a similarly broad and inclusive definitional approach in interpreting other sections of the 1992 Cable Act. See, e.g., Complaint of WNYC Communications Group against Time Warner New York City Cable Group, Memorandum Opinion and Order, CSR-3748, Mass Media Bureau (released May 21, 1993), at 4 (acknowledging "broad, inclusive definition" of term "noncommercial programs for educational purposes").

29/ As evidence of this intent, the Commission appropriately points to the House Report on the Cable Act, which served as the basis for Section 25, and which was cast in terms of various types of enumerated noncommercial "public service uses." These uses were defined to include 1) programming produced by public telecommunications entities, including independent production services; 2) programming produced for educational, instructional or cultural purposes; and 3) programming produced by any entity to serve

obligation.[30] Contrary to AAPTS position, however, the Commission should not read Section

DBS providers will offer noncommercial "informational" programming to their customers,[32] as well as noncommercial educational programming that may be provided by sources other than national educational programming suppliers. Contrary to AAPTS' interpretation, the Commission should not read the statute in a manner that constrains DBS providers' ability to choose from the widest possible menu of qualified programming.[33]

B. The Commission Must Protect DBS Providers' Ability to Choose Among Qualified Program Offerings

Regardless of the universe of program suppliers that the Commission ultimately decides will be qualified to supply such programming, or of the types of programming the Commission ultimately determines will qualify as "educational or informational" for purposes of satisfying Section 25, it is critical that DBS providers be left with the discretion and flexibility to select the specific suppliers of noncommercial offerings that will be carried on their systems to meet their program carriage obligations.

32/ As DirecTv pointed out in its Comments, the public affairs programming available on C-SPAN & CSPAN 2 provides an excellent example of noncommercial informational programming that might not be counted towards meeting the requirement under a restrictive reading of the statute, but that nevertheless appears to be the kind of

CFA, for example, would grant qualified noncommercial programmers access to a DBS provider's reserved channel capacity on a "first come, first served" basis.[34/] The Commission should reject this proposal. There is absolutely no basis in the 1992 Cable Act for such a result. Once the Commission has established the "pool" of the programming types or suppliers that will qualify to meet the Section 25 carriage obligation, the DBS provider -- as the entity that has invested hundreds of millions of dollars to set up its business and to distinguish itself in the MVPD marketplace -- must be able to choose which suppliers of noncommercial programming will provide services or specific programming that best "fits" within the context of the provider's other program offerings.

The preservation of such discretion is particularly important during these nascent phases of DBS to ensure that providers are afforded maximum flexibility within the boundaries of the

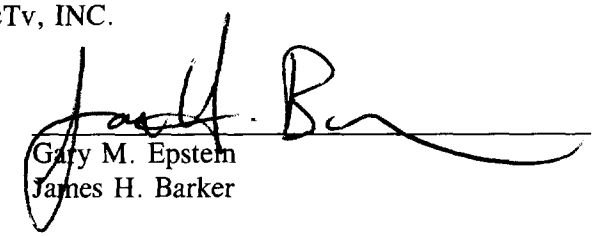
reserved capacity, the DBS provider, and not an advisory or coordinating entity, is best positioned to judge quickly and efficiently which service will best fit within its overall programming mix.

VI. CONCLUSION

The Commission should adopt a regulatory approach that ensures DBS providers the discretion and flexibility to effectively meet their public interest and program carriage obligations. The Commission must also protect this important new service from being be hamstrung by excessive regulation or unsupportable interpretations of Section 25. DBS has vast potential to provide a wide spectrum of public service uses and programming to the public apart from the provision of entertainment programming. The public service programming carried on DBS systems need not be synonymous with the mostly unwatched void of PEG-access channels. The Commission can and should, consistent with Section 25's mandate and statutory scheme, allow DBS providers to maximize the service's public service potential by integrating quality noncommercial educational or informational programming into their service offerings.

Respectfully submitted,

DirecTv, INC.

By: 

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